

## REMARKS

This amendment is in response to the final Office Action mailed February 12, 2007. Claims 1-20 are pending in the application. .

### 1. Claim Rejections Under 35 USC § 103

#### A. Claims 1-3

Claims 1-3 were rejected under 35 USC § 103(a) as being obvious over King et al., US 5,704,045 (hereinafter King), in view of Schwab, S., "The International Journal of Insurance Law 1997," 4:28-39, 175-178 (hereinafter Schwab), and further in view of "Hall, R. "Alternatives to Estimation of Claims and Acceleration of Reinsurance Recoverables: The Uniform Receivership Law," (1999) (hereinafter Hall). Applicants traverse this rejection for the reasons noted below.

#### Claims 1-3

Present claim 1 recites "guaranteeing the payment of the pre-determined fixed dividend to claimants or insureds of the insolvent Insurance Company when said allowed claim matures." The Examiner cited Schwab for this teaching, however, Schwab fails to teach or suggest to one of skill in the art that the payment is made based upon a pre-determined fixed dividend. In contrast to Schwab, claim 1 recites guaranteeing the payment of a pre-determined fixed dividend when the claims mature, that is, the contingent claims are not paid a dividend early as in Schwab, but the claims are paid late at a predetermined fixed

dividend rate only after the contingent claims are allowed and the claims mature. So rather than the immature claims being cut-off when the estate of the insolvent insurance company is depleted – the situation Schwab describes as being avoided by early payoff on the contingent claims, claim 1 provides that the dividend is guaranteed to be paid at a pre-determined fixed dividend rate when the claim matures.

Schwab suggests that contingent claimants receive an early payment based on their estimated claim value of a contingent claim rather than a pre-determined fixed dividend based on the actual claim amount when it matures, as in the applicants' method (see page 9 of present application – claim paid as a percentage of the NOD, which is made when a mature claim is no longer contingent). This procedure in Schwab appears mainly as a device to allow the Liquidator to obtain the reinsurance recoverables prior to the actual value of the "contingent" claims becoming known, and then paying only against the estimated value of the claim, rather than an NOD liquidated amount as with mature claims. Even at that, under Schwab there is no "guarantee" that those "allowed" contingent claims would receive a **predetermined fixed dividend** because Schwab noted that the Court still "allows reinsurers, and others, to contest whether a claim is subject to estimation and the value of a claim." (page 176, Ins. 42-44). For this additional reason, Claim 1 is patentable over the combination of cited references.

Even taking Schwab in combination with the other cited references, King and Hall, there is no teaching of guaranteeing the payment of a fixed dividend when the allowed claim matures. The Examiner admits King contains no such teachings, and the sections of Hall cited in the rejection of claim 1 teaches payments from the reinsurer to the receiver, and does not refer to a **guaranteed payment** or a **pre-determined fixed dividend** being paid to the claimants when the claim matures. At page 5 of the Office Action, the rejection states that guaranteed payments of fixed dividends are taught by Hall's teaching of a "discount factor." However, "discount factor" as used by Hall relates to the interest rate applied to the financial calculations, such as the "net present value" calculation noted in Hall. Further, applicants submit that in the context of insurance receiverships, such payments based on pre-determined fixed dividends are not obvious because there has been no teaching or suggestion as to how to administer guaranteed payments of pre-determined fixed dividends to claims that later mature during the administration of an insurance receivership with shrinking volatile assets undergoing liquidation. That limitation in combination with the other limitations of claim 1 act in concert to equitably transfer the risks from the insureds to another party, such as the indemnifying agent as recited in claim 4.

Accordingly, claim 1 and its dependent claims are patentable over the cited art. Applicants request that the rejection be withdrawn.

Claims 12-15

Claims 12-15 were rejected as being obvious over King, Schwab, Hall further in view of Jenkins. Claims 12-15 depend from claim 1 and should be allowable for at least the same reasons as set forth above for claim 1. Applicants request that the rejection be withdrawn.

**B. Claims 4-9 and 16-18**

Claims 4-9 were rejected as being obvious over King, in view of Schwab in view of Hammond (US 5,712,984). This rejection is traversed for the following reasons.

Claims 4-9

Like Claim 1, claim 4 recites that the payments at the guaranteed rates are made on the claims when the claims mature. The rates are determined prior to the claims maturing, and hence are pre-determined. Schwab teaches making early payments based on estimated values of the "contingent" claims, rather than delaying the payments until after the claims mature. Moreover, the other references fail to teach or suggest that the rates of payment is guaranteed at the pre-determined rate. Accordingly, for this reason and the reasons noted above with regard to Claim 1, Claim 4 is not obvious over the cited art. Thus, the rejection against independent claim 4 and dependent claims 5-9 should be withdrawn.

### Claims 16-18

Claims 16-18 were rejected as being obvious over King, Schwab, Hall further in view of Jenkins. Claims 16-18 depend from claim 4 and should be allowable for at least the same reasons as set forth above for claim 4. Applicants request that the rejection be withdrawn.

### **C. Claim 10-11 and 19-20**

Claims 10-11 were rejected under 35 USC § 103(a) as being obvious over Hammond et al., US 5,712,984 (hereinafter Hammond) in view of King et al., US 5,704,045 (hereinafter King). The rejection is traversed for the reasons noted below.

### Claim 10

Like Claim 1, independent claim 10 recites that the payments at the guaranteed rates are made on the claims when the claims mature. Hence, it is understood that the rates are pre-determined and guaranteed before the claims mature. In connection with claim 1, the rejection admitted that this King fails to disclose this limitation. Moreover, the portion of King cited for this limitation in claim 10 fails to teach that the insolvent Insurer is indemnified for a **guaranteed pre-determined rate of payment** to be made when claims mature. Hammond also fails to teach this limitation. As discussed above in connection with claim 1, Schwab (while not relied on here) also fails to teach making payments based on estimated values of the "contingent" claims. In combination these references do

not suggest to one of ordinary skill in the art to modify their teachings to obtain this claimed limitation in the context of the claimed process. Accordingly, for this reason and the reasons noted above with regard to Claim 1, Claim 10 is not obvious over the cited art. Thus, the rejection against independent claim 10 and dependent claim 11 should be withdrawn.

Claims 19-20

Claims 19-20 were rejected as being obvious over King, Schwab, Hall further in view of Jenkins. Claims 19-20 depend from claim 10 and should be allowable for at least the same reasons as set forth above for claim 10. Applicants request that the rejection be withdrawn.

**3. Conclusion**

Applicants respectfully submit that the rejections have been overcome in view of the amendments and above remarks, and that the present claims are in condition for allowance. The Examiner is kindly requested to phone the undersigned to clarify any remaining issues to expedite allowance.

Respectfully submitted,



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